REMARKS

The present application was filed on November 14, 2000 with claims 1-15. Claims 1-15 are currently pending in the application. Claims 1, 14 and 15 are the independent claims.

In the Office Action, claims 1-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,870,468 to Harrison (hereinafter "Harrison") in view of U.S. Patent No. 5,784,464 to Akiyama (hereinafter "Akiyama").

Applicants respectfully traverse the §103(a) rejection of claims 1-15. Applicants ask that the Examiner reexamine the present application in view of the following remarks.

Applicants initially note that a proper *prima facie* case of obviousness requires that the cited references, when combined, must "teach or suggest all the claim limitations," and that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." See MPEP §706.02(j).

Independent claims 1, 14 and 15 each describe the encrypting of one or more files "using a first cryptographic key associated with a current time interval for which the files are generated." In formulating the §103(a) rejection, the Examiner argues that this element of the claims is taught by Harrison. More specifically the Examiner states on p. 4 of the Final Office Action:

> Referring to the independent claims 1, 14 and 15, the limitation "configuring the software program . . . such that one or more files generated by the program are ate (*sic*) least partially encrypted using a first cryptographic (*sic*) associated with a current time interval . . ." is met by file protection agent software (18) depicted in Fig. 2, which encrypts files with encryption key. The key is generated for the particular set of files (see Fig. 1) and the key is used in accordance with the preset time limit (see block 6). Therefore the encryption key is associated with the time interval, as recited in the instant claims.

Applicants respectfully disagree. One skilled in the art will immediately recognize that Harrison teaches "a time interval" element that is entirely different in nature from that recited in the independent claims of the present invention. The time interval described by Harrison (block 6 of FIG. 1) is a user-defined "File Unprotected Time interval" which "will determine how long a file in the File Protection List . . . may remain unencrypted (or unprotected) after being closed" (Harrison,

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col. 3, lines 9-12, *emphasis added*). After this time period runs, an unencrypted file is automatically encrypted (see Harrison, col. 3, line 59 to col. 4, line 9; and FIG. 5, element 16). Harrison's time interval is, therefore, merely a time limit, and is referred to as such in Harrison's FIG. 1, elements 6 and 7. Claims 1, 14 and 15, on the other hand, describe an entirely different type of time interval. The time interval in these claims is the "current time interval for which the files are generated." Accordingly, this time interval unambiguously refers to the period of time forwhich the files are generated. Notably, it is the variation in the cryptographic key from one such time period to another in accordance with the invention that acts to enable the invention to discourage the unauthorized use of software. See, for example, the Specification, p. 3, lines 11-17.

Applicants respectfully submit, therefore, that Harrison teaches an encryption process with a user-defined time limit on the encryption state of any given file rather than an encryption key associated with a current time interval like that described in claims 1, 14 and 15. Moreover, Akiyama fails to remedy this deficiency in Harrison. As a result, claims 1, 14 and 15 would not have been obvious at the time invention was made over Harrison in view of Akiyama.

It is further noted that, with respect to providing a motivation for combining Harrison and Akiyama, the Examiner argues on p. 5 of the Final Office Action:

> One of ordinary skill in the art would have been motivated to have a software program configured with the key associated with the time interval and provide periodic updates including encryption keys associated with subsequent time intervals as taught in Akiyama for eliminating the risk of the unlawful decryption thereof by a third party (see Akiyama column 17, lines 66-68).
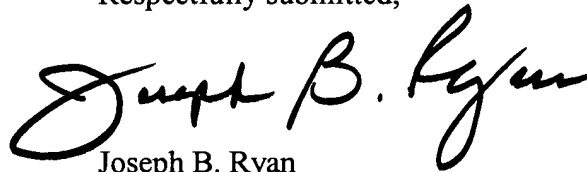
The Federal Circuit has stated that when patentability turns on the question of obviousness, the obviousness determination "must be based on objective evidence of record" and that "this precedent has been reinforced in myriad decisions, and cannot be dispensed with." In re Sang-Su Lee, 277 F.3d 1338, 1343 (Fed. Cir. 2002). Moreover, the Federal Circuit has stated that "conclusory statements" by an examiner fail to adequately address the factual questions of motivation, which is material to patentability and cannot be resolved "on subjective belief and unknown authority." Id. at 1343-1344. Applicants respectfully submit that this §103(a) rejection contains no such showing of objective evidence of record that would motivate one skilled in the art to combine the proposed references.

Without characterizing Akiyama, Applicants submit that, absent the use of improper hindsight, periodically changing encryption keys to eliminate unlawful decryption by unauthorized third parties does not motivate one skilled in the art to apply such a technique to software aging in accordance with the present invention.

In view of the above, Applicants submit that claims 1, 14 and 15 are in condition for allowance. Moreover, dependent claims 2-13 are also in position for allowance over the references of record for at least the same reasons as claim 1. Applicants, therefore, respectfully request withdrawal of the §103(a) rejection.

A Notice of Appeal is submitted concurrently with these remarks.

Respectfully submitted,

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Enclosure(s): Notice of Appeal